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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

FEB 09 2001

IN THE MATTER OF THE PETITION OF INDIANA )  
BELL TELEPHONE COMPANY, INCORPORATED, )  
D/B/A AMERITECH INDIANA PURSUANT TO )  
I.C. 8-1-2-61 FOR A THREE-PHASE PROCESS )  
FOR COMMISSION REVIEW OF VARIOUS )  
SUBMISSIONS OF AMERITECH INDIANA TO )  
SHOW COMPLIANCE WITH SECTION 271(C) OF )  
THE TELECOMMUNICATIONS ACT OF 1996 )

INDIANA UTILITY REGULATORY COMMISSION

CAUSE NO. 41657

**AMERITECH INDIANA'S SUBMISSION OF PERFORMANCE REMEDY PLAN**

Pursuant to the Indiana Utility Regulatory Commission's ("Commission") docket entry dated November 9, 2000 ("Nov. 9 Docket Entry") in this cause, Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana ("Ameritech"), by counsel, respectfully submits its proposal for a "performance remedy plan," setting forth a system of monetary remedies designed to enforce the performance measurements and benchmarks previously filed with the Commission as the Joint Petition to Adopt Baseline Performance Measures ("Joint Petition") on December 27, 2000. In support of its proposal, Ameritech further states as follows:

**I. BACKGROUND**

By Joint Petition the parties to this cause presented proposed performance measurements and standards, adapted from a set of measures developed in collaborative proceedings in Texas, as the "baseline" performance measurements for use in Indiana. The Commission had previously established a series of collaborative workshops to address modifications to the baseline measures, and to develop additional measures (including measures for new products and services, such as advanced services). As a result of those workshops, the parties submitted a Joint Petition containing a revised performance measurement plan.

The purpose of this phase of the proceeding is to develop a system of remedies to enforce the performance standards. Ameritech has proposed a plan based on the remedy plans developed in Texas and approved by the FCC. The CLECs have created a competing proposal.<sup>1</sup> The Commission issued a set of 44 principles for a remedy plan in its Nov. 9 Docket Entry, to be addressed by the parties in their comments on the proposed plans. In these initial comments, Ameritech formally submits its remedy plan for the Commission's consideration and approval, and addresses each of the Commission's principles.

## **II. AMERITECH'S PROPOSED PERFORMANCE ASSURANCE PLAN**

### **A. How The Plan Was Developed**

The details of Ameritech's proposed plan are set forth in the Appendices to this submission. Appendix 1 presents the plan itself, preceded by a short narrative that provides an executive summary attached as Exhibit A. Appendices 2 and 3 are charts (referenced in the plan description) that summarize the treatment of the various performance measures under the proposed performance assurance plan.

Ameritech's performance measurements and benchmarks were modeled on measurements developed in collaborative proceedings for use by Southwestern Bell ("SWBT") in Texas, as modified to reflect the results of the Indiana collaborative established by this Commission and parallel collaboratives throughout the Ameritech region. Likewise, Ameritech's proposed plan for enforcing its performance measurements and benchmarks is modeled on the one developed in Texas, which the FCC endorsed in its approval of SWBT's

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<sup>1</sup> Worldcom did not make a presentation; however, it appears that Worldcom supports the joint CLEC proposal, based upon a brief e-mail to Mr. John Kern and the Ameritech271 Listserv (dated October 25, 2000). Ascent did not make a presentation, but distributed a written set of concerns and recommended principles to the Ameritech271 Listserv on October 19, 2000.

application to provide long-distance service in Texas, and which the FCC again endorsed just last month in its approval of SWBT's Kansas and Oklahoma applications. The proposed plan also mirrors the plan approved by the FCC as a condition of its approval of the SBC-Ameritech merger, which sets forth a system of payments to the U.S. Treasury for certain performance shortfalls.

As with the underlying performance measurements and benchmarks, Ameritech has tailored the Texas assurance plan to reflect modifications to measurements and benchmarks resulting from the various collaborative proceedings.

#### **B. Key Features of the Proposed Plan**

Ameritech's plan was specifically designed to work with the performance measurements and standards the parties jointly presented to the Commission for approval. And experience shows that it *has* worked. The plan provides for two classes or tiers of performance remedies. Tier 1 remedies apply to customer-affecting measurements (for instance, the interval for installing or restoring service), and would be paid to those CLEC or CLECs that receive substandard performance after incorporating the performance assurance plan in their interconnection agreements. Ex. A, at 9-10. Tier 2 remedies apply to general, competition-affecting measurements (such as OSS availability) and would be paid to the State Treasury. *Id.* At 11-12. For both tiers the penalties typically accrue on a "per occurrence" basis (in other words, the remedial amount would be calculated according to the number of incidents in which Ameritech delivers non-compliant performance) with some remedies assessed at a fixed amount per measure. *Id.* at 13-17. Each measurement also is ranked "low," "medium" or "high" in priority, with the size of the per-occurrence payment tailored accordingly. Appendix 2 lists the ranking for each measurement.

The total amount of remedies under the plan would be subject to an annual “cap,” based on Ameritech Indiana’s net return and calculated in accordance with the methodology described in the FCC’s order approving SWBT’s application under section 271 (“*Texas 271 Order*”),<sup>2</sup> Ex. A, at 7. Briefly, the plan calculates remedies via the following steps:

1. Ameritech reports performance for the applicable CLECs and measurements in a given month by the 20<sup>th</sup> day of the following month. Ex. A at 1. For each separate performance measurement and category, Ameritech would compare reported performance to the applicable standard.

2. If reported performance falls short of the standard, Ameritech would perform statistical analysis to eliminate shortfalls that are merely the product of random chance and to identify shortfalls that are statistically significant. The first stage of the analysis is designed to achieve 95 percent confidence that a shortfall is not due to random chance; a second step, using a “K” table, is used to address the remaining 5 percent expected error rate.

3. For statistically significant differences, Ameritech would compute Tier 1 remedies based on the following factors:

- a) the size or severity of the performance shortfall (how far reported performance fell short of the standard);
- b) the number of occurrences or transactions affected (for those remedies that are assessed on a per-occurrence basis); and
- c) a remedy amount, reflecting the measure’s priority. This amount increases with each consecutive month of below-standard performance, up to six consecutive months.

4. Next, Ameritech would check monthly and year-to-date remedies against the applicable “cap.” Ex. A, at 7, 8. This results in a Tier 1 remedy, which is credited to the CLEC. (There is a limited waiver procedure, which allows Ameritech to contest remedies for performance shortfalls that are due to the CLEC, or to an Act of God, and which provides for expedited resolution by the Commission.)

5. If performance fails to meet standard for three consecutive months, Ameritech would compute Tier 2 remedies payable to the state. This calculation is similar to the Tier 1

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<sup>2</sup> In re Application by SBC Communications Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, 15 F.C.C. Rcd. 18,354 (June 30, 2000) hereinafter *Texas 271 Order*.

procedure, but excludes the application of the K table (step 2) and adds a step for treble remedies on low volume “emerging” market measures.

The FCC has approved Ameritech’s remedy plan three times: first, when it approved a similar plan for use in all 13 of the SBC-Ameritech states, as a condition of approving the SBC-Ameritech merger; second, when it endorsed the Texas plan (which served as the model for Ameritech’s proposal here) as part of its order approving SWBT’s section 271 application for Texas; and most recently, when it endorsed virtually identical plans in Kansas and Oklahoma, and approved SWBT’s section 271 application for those states. And, as we show below, Ameritech’s plan addresses all 44 of the principles for an effective remedy plan set forth in the Commission’s Nov. 9 Docket Entry.

### **III. DISCUSSION OF COMMISSION PRINCIPLES FOR REMEDY PLANS**

#### **Remedy Plan Structure**

1. Oversight of the remedy plan and the performance measures supporting the plan will ultimately rest with the IURC.

**Response:** Ameritech’s proposal gives the Commission oversight of the remedy plan, and the underlying performance measures, at each important step of the performance process:

- The Commission is to approve the performance measurements (including definitions, calculations, and business rules) on which the remedy plan is founded, and the performance standards that the plan is designed to enforce. Ex. A, § 1.0.
- Going forward, Ameritech’s plan establishes periodic collaborative reviews, every six months, in which the parties can propose the addition, modification, or deletion of performance measures and/or standards. This Commission has responsibility to approve, reject, or modify the parties’ agreements, and to resolve any open issues. And of course, the parties welcome the participation of the Commission and its staff in the collaborative reviews themselves.
- The plan is to be implemented via interconnection agreements (Ex. A, § 5.5), which are subject to Commission approval and subsequent enforcement under the 1996 Act.

- The Commission has access to monthly reports on Ameritech's wholesale and retail performance in the aggregate, and on the calculation of "Tier 2" remedies payable to the state. It will also have access to performance reports issued to individual CLECs. All reports are available by clicking on the "performance measurement" selection on SBC's CLEC Online web-site.
  - The plan acknowledges and complies with Commission orders relative to performance audits (Section 6.6).
  - The Commission resolves disputes (Ex. A, §§ 7.1, 7.2, & 7.4) and has authority to grant waivers as to remedies or assessments under the Plan (*id.* §§ 7.1, 7.2, 7.4 & 10).
  - Finally, the Commission retains its authority to grant or deny relief other than that contemplated by the Plan. For example, it will play an important advisory role in the FCC's consideration of any application under § 271 of the Act. And if, after receiving § 271 approval, Ameritech reaches the annual "cap" on remedies under the Plan, the Commission may recommend to the FCC that Ameritech cease offering in-region interLATA services to new customers. Ex. A, § 7.5.
2. The remedy plan should adjust in a timely and efficient way to changing market conditions.

**Response:** On an ongoing basis, the Ameritech plan provides for in-depth collaborative reviews every six months, in which the parties can propose additions, modifications, and deletions to the performance measurements and standards. Ameritech's plan supplements these reviews with quarterly status meetings. The FCC endorsed similar provisions of the Texas remedy plan, and recognized that "this continuing ability of the measurements to evolve is an important feature because it allows the Plan to reflect changes in the telecommunications industry and in the [local] market." *Texas 271 Order*, ¶ 425.

In addition, the "cap" on remedies under the Ameritech plan will be updated on an annual basis using the most recent ARMIS data available on the FCC web-site.

3. The remedy plan should contain measures and penalties for all relevant points of the 14-point checklist.

**Response:** Ameritech's performance measures address each of the following checklist items':

<u>Checklist item</u>	<u>Applicable Measures</u>
i. Interconnection	70-78, 107-109 (collocation), MI-4 (collocation)
ii. Unbundled network elements	55-69, 114-115.2, MI-3, WI-1, WI-2, IN-1
iii. Poles, ducts, conduit	105-106, MI-5
iv. Unbundled loop transmission	See item (ii) above
v. Unbundled local transport	See item (ii) above
vi. Unbundled local switching	See item (ii) above
vii. 911, directory assistance, and operator services	80-83, 104.1, 110-113, MI-6 through MI-8
viii. White pages listings	CLEC-W-4
ix. Numbering administration	117-119
xi. Number portability	91-101
x. Resale	27-54

In addition, Ameritech's performance measures address the operations support systems ("OSS") that serve multiple checklist items. The measures covers all five OSS functions: pre-ordering (measures 1-2, MI-10, MI-16), ordering (measures 5-13.1, MI-1, MI-2, MI-12 through MI-14), provisioning (27-36, 43-51.1, 55-64.1, 73-75, 78, MI-3, WI-1, WI-3, CLEC-W1 through CLEC-W11, and IN-1), maintenance (37-42, 52-54, 65-69, and WI-2), and billing (measures 16-20). Further, Ameritech's plan contains general measures applicable to more than one OSS function, including interface availability

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<sup>1</sup> As of yet, no party has proposed performance measures for checklist items x (databases/ signaling), xii (dialing parity) and xiii (reciprocal compensation). To the extent a meaningful measure can be designed in these areas, it can be proposed and considered in the plan's ongoing six-month reviews. The FCC has endorsed the performance measurement plans in Texas, Oklahoma, and Kansas even though those plans do not have separate measures for the same checklist items.

(measure 4), responsiveness of Ameritech's Local Service Center and Local Operations Center (measures 21-26) and change management (MI-15).

The comprehensive scope of Ameritech's plan has been confirmed by the FCC. Ameritech's performance measurements are based on the Texas measures endorsed by the FCC in its *Texas 271 Order*, and they incorporate numerous additional measures developed in collaborative proceedings thereafter.

4. The remedy plan will clearly and unambiguously support the five factors identified by the FCC in its Bell Atlantic-New York and SBC-Texas 271 orders. These five factors are: (1) Potential liability that provides a meaningful and significant remedy to comply with the designated performance standards; (2) Clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance; (3) A reasonable structure that is designed to detect and sanction poor performance when it occurs; (4) A self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and (5) Provide reasonable assurances that the reported data are accurate.

**Response:** Of the plans proposed in this proceeding, only the Ameritech plan meets these criteria. Indeed, the FCC expressly found that the Texas plan, on which Ameritech's proposal is based, satisfied the criteria in its *Texas 271 Order*.

**Potential Liability Provides A Meaningful Incentive To Comply**

Ameritech's payments under the proposed plan would be calculated using the same formula that SWBT uses in Texas. The FCC reviewed and approved this methodology in its *Texas 271 Order* (¶¶ 423-24), finding that it "would discourage anti-competitive behavior by setting the damages and penalties at a level above the simple cost of doing business" and that it thus "represents a meaningful incentive for SWBT to



maintain a high level of performance.” The FCC reaffirmed this finding in its *Kansas & Oklahoma 271 Approval Order* (§§ 273-74).<sup>4</sup>

### **Clearly-articulated Performance Measures**

The performance measurements and benchmarks in Ameritech’s proposed plan are based on those approved in the Joint Stipulation, December 1999, pursuant to the agreement of the collaborative participants. There is no dispute between the parties that these performance measurements are, for present purposes, comprehensive and appropriate.

### **Reasonable Structure To Detect And Sanction Poor Performance**

Ameritech’s proposal establishes a detailed set of procedures for timely reporting and review of performance data, using clearly-defined measures and benchmarks in a consistent format. It is to be incorporated in interconnection agreements, and thus will work within the existing structure of those agreements. Its structural elements have been implemented and proven to work in practice, and the FCC found that they “appear reasonably designed to detect and sanction poor performance when it occurs.” *Texas 271 Order*, ¶ 426; *Kansas & Oklahoma 271 Approval Order*, ¶ 276.

### **Self-executing mechanism**

Ameritech’s proposal calls for automatic, self-executing remedy payments. So does the CLEC proposal. The difference is that Ameritech’s proposal protects not only the CLEC interest in prompt payment, but also Ameritech’s own rights to due process and the public interest in reaching an accurate result. No one could seriously contend, for

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<sup>4</sup> In re Joint Application by SBC Communications Inc. et al. for Provision of In-Region, Interlata Services in Kansas and Oklahoma, CC Docket No. 00-217, FCC No. 01-29, 2001 WL 55637 (released Jan. 22, 2001) hereinafter *Kansas & Oklahoma 271 Approval Order*.

example, that Ameritech should be penalized for perceived shortfalls in performance that are really the fault of the CLEC or the result of an Act of God. Thus, Ameritech's proposal provides for an expedited dispute resolution process, which must be initiated before the payment due date, and which carefully defines the limited circumstances in which payment of remedies may be withheld. The FCC found these same mechanisms to be "reasonably self-executing" and "generally comparable to the mechanisms [it] found satisfactory in the Bell Atlantic New York Order." *Texas 271 Order*, ¶ 427; *see also Kansas & Oklahoma 271 Approval Order*, ¶ 277 ("The performance monitoring and enforcement mechanisms appear to be reasonably self-executing, and are comparable to the mechanisms we found satisfactory in the Bell Atlantic New York Order and in the SWBT Texas Order").

#### **Reasonable Assurances That Reported Data Are Accurate**

Ameritech's proposals for auditing performance data includes a provision that allows individual CLECs to request mini-audits if they believe there is a problem with the data similar to the process defined in the Joint Stipulation. Audits impose a substantial burden on Ameritech, and there should be reasonable limits to ensure they will take place only where they are truly necessary. Given the number of CLECs that might request mini-audits, a limitation of one mini-audit per CLEC per year is reasonable and in fact necessary to prevent overload. Further, Ameritech agrees to pay for mini-audits if the CLEC's allegations turn out to have merit; it is only fair for CLECs to reciprocate and pay the bill where such allegations turn out to have been unwarranted.

5. The remedy plan should not include a fixed termination date. The remedy plan should not assume an unchanging list of performance measures ("PMs") over the life of the plan. The plan will include criteria and procedures to add, delete, or modify the PMs used in the plan.

**Response:** Ameritech's plan does not include a fixed termination date. To the contrary, it is designed to evolve over time, and provides for continuing review and modification of the underlying performance measures and standards during the six-month review process.

6. The remedy plan should be neutral as to the various entry strategies (resale; UNEs; interconnection; collocation; and other, non-UNE facilities) that competitive carriers are likely to use in entering the local exchange market.

**Response:** Ameritech's plan is neutral to all of the various entry strategies identified by the 1996 Act for local service related activities (UNEs, interconnection, and resale), and is in fact designed to accommodate carriers that choose individualized strategies. As described under principle number 3, Ameritech's plan contains a wide variety of measures for each entry strategy. Each measure is further sub-divided into numerous product and service categories (*e.g.* Centrex resale, 2-wire digital loops) and geographic regions, so that competing carriers can focus on the products, services, and areas they deem important to their own individual entry strategy and business plan. For purposes of the remedy calculation, similar performance measures (such as the average installation interval) receive the same priority across all entry strategies and product or service categories.

7. The remedy plan will treat the selection of PMs, weight of the PMs, and the sample size in such a way as to maintain neutrality with respect to mode of entry (resale; UNEs; interconnection; collocation; and other, non-UNE facilities). For example, if a mode of entry is not represented in the set of PMs, then anti-competitive behavior with respect to that mode of entry might not be detected. Similarly, the way the PMs are weighted and the way their populations are sampled should be structured to not discriminate against a mode of entry.

**Response:** See response to principle number 6 above.

8. The Indiana remedy plan should give the IURC explicit authority to reallocate the monthly distribution of penalty payments between the change management/change control portion of the plan and other portions of the plan.

**Response:** The Commission may reallocate the monthly distribution of payments between the performance measures related to change management/change control, and other performance measures, by adjusting the remedy amount for the measures in those areas, or by adding new performance measures in either area. This can be done through the six-month review process.

## Performance Measures

9. The remedy plan will be built on the Indiana-specific performance measures and metrics that support this performance remedy plan, as well as other measures and metrics that are developed, tested, and audited as part of the third party testing of operational support systems for SBC/Ameritech. These measures will be clearly articulated and encompass a comprehensive range of carrier-to-carrier performance. Where Indiana-specific goals and criteria are not compromised performance measures or metrics may be common across SBC/Ameritech states. The remedy plan should specify how, if two or more PMs measure the same underlying performance or function, the PMs should be counted for penalty calculations.

**Response:** Ameritech's plan uses performance measurements and standards approved by this Commission, and it calculates remedies for virtually all measures based on performance results specific to Indiana.<sup>5</sup> While Ameritech's plan was modeled on the performance measurement and remedy plan developed in Texas, it has been modified and expanded to reflect the results of collaborative proceedings in Indiana, and throughout the Ameritech and SWBT regions. The geographic areas for categorizing

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<sup>5</sup> A few functions are performed at the Ameritech-region level, and are therefore reported at that level: Interface Availability (measure 4) and Outage Notification (measure MI-11); Billing (for the convenience of CLECs, Ameritech provides consolidated regional billing information); Local Service Center and Local Operations Center responsiveness (measures 21-26); and Change Management (measure MI-15).

performance data are specifically tailored to reflect the Indiana market (see response to principle numbers 20 and 21), and were developed in the collaborative sessions here.

10. The remedy plan should include performance measures and penalties regarding the availability, functionality, and quality of SBC/Ameritech's front-end/front-office and back-end/back-office systems.

**Response:** Ameritech's performance measures and remedy plan focus on overall functions and the end results of OSS processes, and thereby capture the availability, functionality and quality of both the front-end "interfaces" and the back-end "legacy" systems. For example, the average installation interval captures the time required to receive orders through the interface and the time involved to complete processing in the back-end systems. Where a given function is specific to an interface, Ameritech's plan provides a separate performance measure and remedy: for example, performance measure 4 evaluates the availability of each of the interfaces used by CLECs to submit transactions.

11. The remedy plan will establish standards and measurements, as well as penalties for "network performance." There should be at least two broad categories of measurements and associated penalties: (1) insufficient trunk capacity, high trunk blockage levels, or excessive trunk provisioning intervals and (2) excessive collocation provisioning intervals.

**Response:** Ameritech's plan includes measurements, standards and remedies for each of the "network performance" categories identified by the Commission. The performance measures for trunk capacity and blockage levels are:

<u>Measure No.</u>	<u>Description</u>
70	Percentage of Trunk Blockage (Call Blockage)
70.1	Trunk Blockage Exclusions
71	Common Transport Trunk Blockage
72	Distribution Of Common Transport Trunk Groups > 2%

The following measures address trunk provisioning intervals:

<u>Measure No.</u>	<u>Description</u>
73	Percentage Missed Due Dates – Interconnection Trunks
74	Average Delay Days For Missed Due Dates – Interconnection Trunks
75	Percentage Ameritech Caused Missed Due Dates > 30 Days – Interconnection Trunks
78	Average Interconnection Trunk Installation Interval

In addition, Ameritech's plan offers two measures of intervals related to maintenance and restoration of existing trunks:

<u>Measure No.</u>	<u>Description</u>
76	Average Trunk Restoration Interval – Interconnection Trunks
77	Average Trunk Restoration Interval for Service Affecting Trunk Groups

Finally, Ameritech's performance measures for Collocation are as follows:

<u>Measure No.</u>	<u>Description</u>
107	Percent of Missed Collocation Due Dates
108	Average Delay Days For AIT Missed Due Dates
MI-4	Average Time to Provide a Collocation Arrangement

12. The remedy plan will contain penalties for discrimination against any CLEC or class of CLECs based upon mode of entry (resale; UNEs; collocation; interconnection; or other,

non-UNE facilities). These penalties should be in addition to any other penalties contained in the remedy plan.

**Response:** As described under principle number 6, Ameritech's plan uses separate performance measurements and categories for each mode of entry, and for different products and services within each mode of entry. Thus, if Ameritech were to discriminate against any CLEC or class of CLECs based on that CLEC's particular mode of entry, the associated shortfall in performance would show up in the CLEC's data for performance measures and categories that are specific to that mode of entry, and would be redressed under the plan.

13. The remedy plan should contain performance measures and penalties pertaining to the general ability of SBC/Ameritech to handle commercial volumes of CLEC traffic prior to the granting of 271 authority for Indiana. Issues that should be considered include the pre-271 scalability of SBC/Ameritech's facilities, equipment, systems, software, processes, etc.

**Response:** The forthcoming third-party OSS audit will include a "stress test" and other procedures to assess the scalability and capacity of Ameritech's current OSS. On a going-forward basis, Ameritech's performance measures will allow the parties and the Commission to assess Ameritech's ability to handle commercial volumes, while still meeting the applicable performance standards, as volumes continue to grow.

14. Raw data underlying a performance measure should be stored in a secure, stable, redundant, and auditable manner – e.g., as regards format and storage medium. All raw data files (both original and back-up(s)) should be maintained for at least three years.

**Response:** Consistent with the Commission's view, Ameritech plans to maintain raw performance data for three years. The independent third-party OSS audit will include testing to verify the methods and procedures for storing raw data. In addition to the

overall audit, Ameritech's plan provides for "mini-audits" to address the specific concerns of a CLEC. See response to principle number 15.

15. The remedy plan will contain a quality control/quality assurance mechanism(s) to ensure that the reported data and results are accurate. At a minimum, this quality control/quality assurance mechanism(s) will include a well-defined method to permit auditing of both data and results. All such audit data and results will be disclosed publicly, subject to appropriate procedures (as required under Indiana law) to protect any data or results that the Commission finds to be confidential, proprietary, or a trade secret.

**Response:** Ameritech is currently undergoing a comprehensive third-party audit of its performance data collection, computing, reporting, and storage. Further, Ameritech's remedy plan specifies cooperative processes for CLECs to raise and resolve specific concerns with respect to performance data, and if necessary to request individual "mini-audits" of performance measurement processes. Ameritech's plan also contemplates that the Commission may, at its discretion, order a complete audit of the performance processes.

16. The remedy plan may contain diagnostic measures, where appropriate, to further identify problem areas and to allow for fine tuning of the performance measure standards in future proceedings.

**Response:** Ameritech's plan includes several diagnostic performance measures designed to:

- Collect data so that the parties can develop appropriate performance standards for new or emerging products or services, or for new measures.
- Provide additional information to help understand or confirm the results of other performance measures.
- Provide information on functions or results that do not necessarily reflect on Ameritech's performance (such as rejected orders, which are typically driven by CLEC errors).



- Provide overall information on functions where the retail and wholesale processes are integrated, therefore eliminating any potential discrimination within the process. These functions would include the measurement of Common Transport Trunk Group Blockage, which assesses blockage to common trunk groups (which handle both CLEC and ILEC traffic simultaneously). Other areas include Operator Services/Directory Assistance call answering, where all calls (CLEC and ILEC) are managed via an Automatic Call Distributor on a nondiscriminatory, first in first out basis.

## Service Quality Criteria

17. The remedy plan will establish minimum service quality levels below which penalties will apply. The remedy plan will include a mechanism for defining minimum service quality standards for particular performance measures where those standards are not already defined under Indiana law.

**Response:** Ameritech's plan defines minimum service quality levels using the exact same methodology the FCC uses in evaluating checklist compliance. First, "[f]or OSS functions that are analogous to those that a BOC [Bell Operating Company] provides to itself, its customers or its affiliates, the nondiscrimination standard requires the BOC to offer requesting carriers access that is equivalent in terms of quality, accuracy, and timeliness"; in other words, "access that permits competing carriers to perform these functions in substantially the same time and manner as the BOC." *Texas 271 Order*, ¶ 94. Second, "[f]or OSS functions that have no retail analogue, the BOC must offer access sufficient to allow an efficient competitor a meaningful opportunity to compete." *Id.* ¶ 95. In applying this test, the FCC considers "whether appropriate standards for measuring OSS performance have been adopted by the relevant state commission or agreed upon by the BOC in an interconnection agreement or during the implementation of such an agreement." *Id.* The FCC has explained, however, that the "meaningful opportunity to compete" test is intended to be the same as, not different from, the general test of nondiscrimination: "[O]ur examination of whether the quality of access provided

to competitors offers ‘a meaningful opportunity to compete’ is intended to be a proxy for whether access is being provided in substantially the same time and manner and, thus, is nondiscriminatory.” *Id.* ¶ 45.

The principal difference between the competing plans relates to their treatment of OSS functions that have a retail analog. As described above, Ameritech’s performance benchmarks focus on nondiscrimination or “parity.” Where Ameritech performs the same service for CLECs as it performs for itself, it should give CLECs the same treatment.<sup>6</sup> For example, if Ameritech installs retail POTS service for its own customers in three days, it should install wholesale POTS service (for CLECs to resell to their customers) in three days. If Ameritech installs retail POTS in four days, the standard for wholesale POTS would be four days. The nondiscrimination standard comports with the 1996 Act and with the FCC’s orders under section 271.

The standard proposed by the CLECs, while it begins with the word “parity,” ends up with something very different -- parity “with a floor.” The CLEC proposal would add a fixed benchmark to the parity standard. The benchmark would apply no matter what Ameritech’s retail performance was. To continue with the previous example: The fixed benchmark might require Ameritech to install resale service for CLEC customers in three days, even if Ameritech installed retail service in four days. If Ameritech nevertheless installed resale service in four days (the same as for retail) it would have to pay a penalty to the CLEC – even though Ameritech was indisputably

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<sup>6</sup> Where Ameritech provides a service to CLECs but not to itself (for example, unbundling network elements), the relevant standard is a benchmark designed to afford an efficient competitor a meaningful opportunity to compete. Ameritech and the CLECs agree that benchmarks, as opposed to “parity” standards, are appropriate in these situations. The CLEC “parity with a floor” proposal discussed below does not apply to such products and services; it applies only where there is a reasonable retail analog that can be used to assess parity.

giving that CLEC the same treatment that Ameritech gave itself. In fact, if Ameritech installed resale service in three and a half days, it would still have to pay the CLEC, even though that CLEC's customers were receiving *better* performance.

Illustrating the CLEC proposal demonstrates why the Commission should not adopt it. "Parity with a floor" does not promote nondiscrimination; indeed, it penalizes nondiscrimination and instead requires Ameritech to provide CLECs with superior service. By imposing a monetary penalty on *wholesale* performance that fails to meet the CLEC "floor," unless the wholesale "floor" and associated penalty structure are precisely equal to the corresponding retail service quality "floor" and associated penalty structure, the CLEC proposal would motivate (and effectively require) Ameritech to provide wholesale service of higher quality and at a higher standard than retail service. The Eighth Circuit has invalidated such "superior quality" requirements *twice*, as inconsistent with the nondiscrimination provisions of the 1996 Act. *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997) ("The fact that interconnection and unbundled access must be provided on rates, terms, and conditions that are nondiscriminatory merely prevents an incumbent LEC from arbitrarily treating some of its competing carriers differently than others; it does not mandate that incumbent LECs cater to every desire of every requesting carrier"), *aff'd in part and rev'd in part on other grounds sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999); *Iowa Utils. Bd. v. FCC*, 2000 WL 979117, at \*11 (8th Cir., July 18, 2000) ("Nothing in the statute requires [an incumbent LEC] to provide superior quality interconnection to its competitors").

Further, Ameritech has gone to great efforts to design all its processes to be "carrier and customer blind" to the maximum extent possible to ensure compliance with

its duty to provide nondiscriminatory service to all carriers. By creating different standards and penalties for wholesale versus retail customers, “parity with a floor” would create a perverse incentive for Ameritech to restructure those processes so that they can distinguish between wholesale and retail customers, and so that, if necessary, Ameritech could then favor the wholesale customers to meet the higher standard and avoid the higher penalty. Distinction is the first step to discrimination (in this case, reverse discrimination in favor of CLECs).

Ameritech has already taken significant steps to improve retail service quality in Indiana. In recent months, Ameritech has taken steps to: (1) upgrade network facilities; (2) increase network service force levels; (3) deploy new labor saving technologies and equipment to increase productivity, such as the Intelligent Field Device and the Global Positioning System; (4) create a Presidential Service Quality Team to regularly review service quality, and a Consumer Network Resolution Center to handle customer questions; and (5) provide additional credits to customers who receive subpar service. These efforts have already borne fruit: Ameritech’s month-to-date average repair interval has decreased each day since October 10, 2000; intervals for service installation have been reduced nearly tenfold; and the backlog of pending installation and repair orders has been cut in half. Additionally, Ameritech has proposed extensive service quality performance measures and substantial penalties for service quality violations in the OI 2000 Stipulation and Settlement. The CLEC proposal does not help Ameritech’s retail customers. Given that the CLEC’s penalty scheme applies only to CLECs themselves, it incents Ameritech to allocate resources to CLEC customers – perhaps at the expense of its own retail customers. It seems entirely counter to the appropriate policy direction for

a Commission to set standards and penalties that incent a firm to discriminate in favor of wholesale firms and against retail customers. "Parity with a floor" would create an *opposing* incentive for Ameritech to focus its limited resources on serving *wholesale* customers so as to meet the CLEC floor and avoid paying penalties. Creating a new system of penalties for *wholesale* performance, does nothing for retail customers and may actually result in the reallocation of resources in exactly the opposite direction from what the Commission would desire.

### Analytic Criteria

18. The remedy plan will provide for a method of determining whether performance measures are being satisfied. If statistical methods are used to determine if performance in a particular area is "in parity," a system designed to balance both type 1 and type 2 errors must be included as a part of the plan. Techniques including or similar to, "stare and compare" will be used for performance measures with a benchmark standard. A detailed rationale must be used if statistical analysis is used for performance measures with a benchmark standard.

**Response:** The Ameritech plan uses a standard statistical methodology designed to assess parity with a 95 percent "confidence level": in other words, an apparent shortfall in performance is considered "statistically significant" if the odds are 95 percent that it is caused by behavior rather than random chance. For performance measures with 30 or more reported transactions during the month, Ameritech would perform the statistical analysis by using a "modified z-test" developed by the Local Competition Users Group (a consortium of CLECs that includes AT&T and WorldCom's predecessor MCI). For performance measures with less than 30 transactions, Ameritech uses "permutation tests" designed for small sample sizes. The FCC has endorsed these tests as "reasonable tests for statistical significance" and it has approved the 95 percent confidence level as a

“commonly used standard.” *New York 271 Order*, Appendix B, ¶ 13.<sup>7</sup> In the SBC/Ameritech merger order, the FCC adopted the same method to evaluate performance for each of the 13 SBC/Ameritech operating companies. Performance remedy plans in Texas, Kansas, Oklahoma, Illinois, and Ohio also use the same methodology.

Statistical analysis is the accepted method to understand and account for random variations that occur in the real world, and thus to reduce the risk of unfair payments. In reality, an apparent shortfall in performance does not, in and of itself, indicate discrimination. Thus, an apparent shortfall in performance should not, in and of itself, result in a remedy payment. Statistical science provides methods of looking at the size of the shortfall (and the rate of shortfalls in other areas) that allow one to figure out how likely it is due to random chance, or instead due to some difference in behavior, *i.e.* discrimination. These methods are merely scientific applications of basic common sense: If retail installations take 3.2 days, one is more likely to find discrimination if wholesale installations take 10 days than if wholesale installations take 3.21 days. Similarly, one is more likely to find discrimination if *all* performance measures are off, than if only one of thousands appears to fail the standard.

#### **Balancing of Type I and Type II Errors**

In statistical parlance, “Type I” errors occur when test results incorrectly show failure, while “Type II” errors occur when the results incorrectly suggest a passing grade. Ameritech’s plan strikes a reasonable balance between Type I and Type II errors. The

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<sup>7</sup> In re Application by Bell Atlantic New York for Authorization under Section 271 of the Communications Act to Provide In-Region, Interlata Service in the State of New York, 15 F.C.C. Rcd. 3953 (Dec. 22, 1999) hereinafter *New York 271 Order*.

FCC specifically found that the 95 percent confidence level represents “a fair compromise.” *New York 271 Order*, Appendix B, ¶ 13. AT&T itself has endorsed this methodology before the FCC, acknowledging that “a one-tailed test with Type I error held at the 5% level strikes a fair balance between the need to account for both Type I and Type II errors.”<sup>9</sup>

More fundamentally, the real “balance” that the Commission should be concerned with is the one set forth in the 1996 Act: the nondiscriminatory balance between wholesale and retail performance. That is, if Ameritech provides discriminatory service to the CLEC, Ameritech should pay remedies; if Ameritech provides *nondiscriminatory* service, Ameritech should pay no remedies. Ameritech’s plan balances Type I and Type II errors by coupling the 95 percent confidence interval discussed above and the K-value table discussed below. Ameritech’s remedy plan gives Ameritech the desired economic incentives: provide nondiscriminatory service in order to avoid paying remedies. A plan that is not balanced in this manner will not accomplish this goal and will create the improper incentive for Ameritech to provide superior (rather than nondiscriminatory) service to the CLEC customers than its own, simply to avoid paying unjustified remedy payments to the CLECs.

#### **Statistical Analysis To Assess Performance Against A Benchmark**

Statistical analysis should be used to evaluate Ameritech’s results with respect to all performance measures, whether the standard is set at “parity” or as a fixed benchmark. The purpose of statistical analysis is to recognize and account for random variations in

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<sup>9</sup> Affidavit of Dr. Colin L. Mallows, Before the Federal Communications Commission, Washington, D.C., 20554, CC Docket No. 98-56, RM-9101, p. 5.

performance for individual transactions, and to reduce the risk that Ameritech would be unfairly penalized for such variations when no real discrimination occurred. When wholesale performance is compared to a retail analog, *both* sides of the equation (wholesale and retail performance) include random variation, so the statistical test is tailored to account for variation on both sides. When wholesale performance is compared to a benchmark, random variation is eliminated on *one* side (the benchmark, which remains constant) but it still remains on the other side: wholesale performance. Ameritech's plan modifies the statistical test, using generally accepted statistical methodology, to reflect the fact that there is random variation on only one side of the comparison. The CLEC plan eliminates statistical analysis entirely, as if random variation did not exist. But that simply ignores reality.

Random chance is everywhere, and it affects all performance data, no matter what standard one uses to evaluate that data. "Stare and compare" is appropriate only when both of the items to be compared are fixed targets. Likewise, it is imperative that the parties and the Commission have adequate confidence in all the remedies assessed under the plan, not just some of them.

19. Where mitigation or "forgiveness" is desired, the remedy plan should identify and fully explain, at a minimum: (1) specific measurements, metrics, or other circumstances to which or under which mitigation or forgiveness would be applied); (2) clearly stated rationale and assumptions for why mitigation is appropriate), (3) the appropriate amount or level of mitigation/forgiveness to be applied; and (4) what criteria will be used to determine what that appropriate level of mitigation or "forgiveness" should be.
- Specific measurements, metrics, or other circumstances to which or under which mitigation or forgiveness would be applied.
  - Clearly stated rationale and assumptions for why mitigation is appropriate.



- The appropriate amount or level of mitigation/forgiveness to be applied and what criteria will be used to determine the appropriate level of forgiveness.

**Response:** Ameritech does not seek “forgiveness” or mitigation where real discrimination has occurred. Ameritech’s plan does, however, recognize that remedies are appropriate *only* where real discrimination has occurred, and inappropriate where no real discrimination has occurred. Ameritech’s plan carries out that goal in three different ways. First, the plan establishes a limited waiver procedure, which allows Ameritech to show that a perceived shortfall in performance is actually the fault of the CLEC, or the result of an act of God (see response to principle number 4). Ameritech would then petition the Commission for a waiver of the associated remedy, pursuant to an expedited dispute resolution procedure.

Second, as described under principle number 18, Ameritech performs statistical analysis of apparent shortfalls in performance to determine, with a 95 percent level of confidence, whether such shortfalls are statistically significant or instead attributable to random chance. All parties agree that remedies are appropriate only in the first of those two cases.

That analysis, however, would only yield 95 percent confidence that remedies are assessed for an actual shortfall in performance. In other words, 5 percent of the remedies calculated under the plan would still be assessed in error, as a “penalty” for random variations in data where no real discrimination has occurred. Accordingly, Ameritech’s plan includes a “K-table” exemption -- proposed by MCI in the Texas collaborative proceedings -- to identify the number of measurements for which no remedy is to be assessed. It applies only to Tier 1 remedies (those paid to CLECs). Essentially, the K table determines the number of “misses” that would be expected given the 5 percent error

rate in the statistical analysis and the total number of measurements reported each month for the applicable CLEC. It then exempts Ameritech from payment of remedies for those misses. For example, if Ameritech missed on 5 performance measures for a given CLEC, and the value from the "K" table is 3, Ameritech would only pay remedies on 2 misses. To minimize the dollar amount of the exclusion (and thus to maximize the remedy paid to the CLEC), the three misses excluded would be the lowest-priority measures, while the two misses for which remedies are still paid would be the highest-priority measures.

20. The remedy plan will disaggregate the resale performance measurements based upon the number and scope of SBC/Ameritech's retail rate groups.

**Response:** Ameritech plans to disaggregate its performance measures for the installation and maintenance of resold services into three geographic areas: Indiana North (Lake County area); Indianapolis Metro Suburban; and Indiana South. The boundaries of these areas are consistent with Ameritech's network reporting groups, and were agreed to by the collaborative participants.

21. The remedy plan will disaggregate the UNE, interconnection, and collocation performance measurements based upon the number and scope of zones that SBC/Ameritech uses to set prices for geographically deaveraged UNEs.

**Response:** Ameritech plans to disaggregate its performance measures for the installation and maintenance of unbundled network elements into three geographic areas: Indiana North (Lake County area); Indianapolis Metro Suburban; and Indiana South. The boundaries of these areas are consistent with Ameritech's network reporting groups. Geographic disaggregations are unnecessary for interconnection functions, which are managed on a statewide basis from a central location, and for collocation functions, which employ region-wide processes. The number of transactions in these two areas

tends to be smaller, almost by definition, than for resale and unbundled network elements; thus, dividing these functions by geographic category is likely to yield sample sizes that are too small for meaningful statistical analysis.

22. The remedy plan must contain measures and penalties for xDSL and other advanced services.

**Response:** Ameritech's plan contains several performance measures, with associated remedies, for DSL, "line sharing" and other advanced services, and for functions involved in providing access to DSL facilities (such as access to loop make-up information to assess a loop's suitability for DSL service, and acceptance testing of DSL loops). In addition, many of the performance measures for unbundled network elements include advanced services as a separate category, again with a separate remedy calculation. Finally, it should be noted that Ameritech's plan provides for trebling Tier 2 remedies that relate to "nascent" services, including xDSL.

Ameritech's performance measures for advanced services cover the gamut of its performance. Four measures specifically address DSL:

<u>Measure No.</u>	<u>Description</u>
6.1	Average Time to Return DSL Firm Order Confirmations
55.1	Average Installation Interval – DSL
57	Average Response Time for Manual Loop Make-up Information
IN-1	Percent Loop Acceptance Test Completed on Due Date

35 other performance measures address a wide variety of services, but include separate categories to specifically address DSL performance.

23. The remedy plan will contain a mechanism to permit changes to the plan to accommodate nascent or emerging services, elements, and functionalities provided to CLECs.

**Response:** An important feature of Ameritech's plan, as recognized by the FCC, is its capacity to adapt to changes in the ever-evolving telecommunications market. Ameritech provides for six-month reviews of performance measures and standards, in which parties can propose (and the Commission can review) additional measures or modifications to existing measures, to reflect emerging services, elements, and functionalities. Note that many of the measures related to advanced services were developed during the six-month review process in Texas, and further refined in collaborative proceedings here.

24. The remedy plan will provide means to ensure that the reported data and results are publicly disclosed, subject to appropriate procedures (as required under Indiana law) to protect any data or results that the Commission finds to be confidential, proprietary, or a trade secret.

**Response:** The Ameritech performance data published on the web-site is not marked as proprietary, or confidential, but an individual CLEC can only access its own results and the results of wholesale and retail performance in the aggregate. The Commission may access data for all individual CLECs, and for wholesale and retail operations in the aggregate. Ameritech makes performance data available to the CLECs and to the Commission via a password protected web-site. Therefore, it is not publicly disclosed.

25. The remedy plan should propose a mechanism for resolving disagreements regarding the format of the raw data to be shared between SBC/Ameritech and the CLECs in a timely and efficient way.

**Response:** Consistent with the Commission's criteria, Section 1.1 of the Ameritech remedy plan provides:

Upon CLEC's request, data files of CLEC's raw data, or any subset thereof, will be transmitted to CLEC. If CLEC's request is transmitted to Ameritech on or before the last day of the month for which data is sought, Ameritech shall provide the data to CLEC on or before the 20<sup>th</sup> day of the month pursuant to mutually acceptable format, protocol, and transmission media. If CLEC's request is transmitted to Ameritech after the last day of the month for which data is sought, Ameritech shall provide the data to CLEC within 20 days of receipt pursuant to mutually acceptable format, protocol, and transmission media.

### **Enforcement Mechanism**

26. The remedy plan will have a manageable enforcement structure for the IURC.

**Response:** The enforcement structure provided for in the remedy plan is based on the Commission's own dispute resolution process (and the associated procedural rules) or, if the parties agree, through commercial arbitration with the American Arbitration Association.

27. The remedy plan and its associated penalties must be legally enforceable and under the control of the IURC.

**Response:** Ameritech's proposal calls for automatic, self-executing remedy payments, typically in the form of credits to the CLEC's wholesale bills. The plan is to be incorporated into interconnection agreements via a short, generic amendment (see response to principle number 31), and will thus be legally enforceable in the same way that any other interconnection obligation is legally enforceable. As described under principle number 1 above, the Commission exercises oversight responsibility via its review and approval of the underlying performance measures, and its authority to resolve disputes under the plan.

28. The remedy plan, including the accrual and payment of penalties, should take effect when the plan is approved by the IURC.

**Response:** Ameritech will implement the remedy plan upon order of the Commission.

Tier 2 remedies will be calculated and paid to the state in the first full month following Commission approval. Individual CLECs will be eligible for “Tier 1” remedies upon entry and approval of the implementing amendments to their interconnection agreement amendments for Tier 1 remedies (see response to principle numbers 28 and 31).

29. The remedy plan will clearly identify any proposed absolute exclusions or caps, as well as any associated assumptions or calculation methodologies. All absolute exclusions and caps in the Indiana CLEC performance remedy plan must be approved by the IURC prior to the IURC’s approval of the remedy plan. In those instances where absolute caps are proposed, the plan must (1) describe what happens when the cap is reached (do the penalties continue to accrue or not, is there an escrow account, etc.); (2) explain why penalties should no longer be assessed and/or paid if the associated poor performance has not been corrected or the associated performance standard has not been met; (3) trigger a review of the underlying reason(s) for the performance and for reaching the cap, and (4) trigger a review of the level of the absolute cap in question.

- Describe what happens when the cap is reached (do the penalties continue to accrue or not, is there an escrow account, etc.);
- Explain why penalties should no longer be assessed and/or paid if the associated poor performance has not been corrected or the associated performance standard has not been met;
- Trigger a review of the underlying reason(s) for the performance and for reaching the cap, and
- Trigger a review of the level of the absolute cap in question.

**Response:** Ameritech’s liability under its remedy plan would be limited to a “cap” amount based on net return – a natural foundation, given that any theoretical incentive for anti-competitive behavior would be founded on a desire to maintain or inflate net return. Section 7.3 of the plan describes the method by which the cap is calculated. The overall cap amount for this year is estimated at \$125.65 million – an amount that is undeniably

substantial. The use of a cap, and the method for calculating its amount, are consistent with the Texas plan that Ameritech used as a model. The FCC approved the use of such caps generally in its *New York 271 Order* (§ 435), and it has approved the specific calculation proposed by Ameritech here (*Texas 271 Order*, § 424; *Kansas and Oklahoma 271 Order*, § 274).

It is important to recognize, however, that the cap is not absolute. It limits *only* Ameritech's automatic, self-executing liability under the remedy plan: It does not limit other remedies available to CLECs, this Commission, or the FCC. Most notably, the FCC (with input from CLECs and this Commission) retains the remedy that the 1996 Act contemplated as sufficient to motivate nondiscriminatory performance: the ability to withhold, suspend or even revoke long-distance relief under section 271. Thus, any shortfall in performance that goes beyond the cap amount would still have meaningful consequences.

Based on this reasoning, the FCC has rejected CLEC objections, identical to those raised here, about the cap on remedies under the Texas plan, and "disagree[d] with commenters that suggest that this amount is insufficient and fails to provide adequate assurance of SWBT compliance in the future." *Texas 271 Order*, § 424. As the FCC explained (*id.*):

Most fundamentally, we disagree with a basic assumption made by several commenters: that liability under the plan must be sufficient, standing alone, to completely counterbalance SWBT's incentive to discriminate. The performance plans adopted by the Texas commission do not represent the only means of ensuring that SWBT continues to provide nondiscriminatory service to competing carriers. In addition to the \$289 million at stake under this plan, as noted above, SWBT faces other consequences if it fails to sustain a high level of service to competing carriers, including: federal enforcement action pursuant to section 271(d)(6); liquidated damages under dozens of interconnection

agreements; and remedies associated with antitrust and other legal actions.  
(footnotes omitted.)

All Ameritech's cap does is assure that the most severe penalties (such as federal enforcement action under section 271, or remedies resulting from complaints or other proceedings before this Commission) do not occur without due process and thus, are not assessed without adequate assurance that such penalties are truly warranted, *i.e.* that the perceived shortfalls in performance really exist and are really Ameritech's fault. Penalties in excess of \$125.65 million should not be assessed lightly; they should only follow an investigation to verify the existence and determine the root causes of performance problems. In the unlikely event that Ameritech's performance were to deteriorate enough to reach the cap,<sup>9</sup> CLECs would undeniably have sufficient incentive to bring the matter to this Commission and the FCC. And if investigation and adjudication revealed the CLECs were correct, the resulting remedy would no doubt be sufficient. True, investigation and adjudication may take more time than an automatic remedy, but that possibility is a small price to pay for due process.

30. The remedy plan should have a simple mechanism that CLECs will use to enter the plan. It should not take a long time or require extensive negotiations for a CLEC to enter the remedy plan.

**Response:** CLECs can enter the plan via a generic, 3-page amendment to their interconnection agreement. Note, however, that Ameritech will pay Tier 2 remedies to the state immediately, and without regard to which or how many CLECs sign an amendment.

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<sup>9</sup> Ameritech estimates that it would have to meet less than half its performance benchmarks over an extended period to reach the cap; currently, Ameritech is meeting well over half of its benchmarks.



31. The remedy plan will provide meaningful and significant financial penalties for non-compliance with the designated performance standards. The financial penalties shall be paid in such a way as to be publicly visible and traceable to the specific underlying poor performance. If penalties are under this plan are to be settled by bill credits, the plan should propose a mechanism that will allow such credits to be issued on an aggregated per-CLEC basis as well as on a per-account basis. The settlement process should be transparent and open to public scrutiny.

**Response:** Ameritech's payments under the proposed plan would be calculated using the same formula that SWBT uses in Texas. The FCC reviewed and approved this methodology in its *Texas 271 Order* (¶¶ 423-24), finding that it "would discourage anti-competitive behavior by setting the damages and penalties at a level above the simple cost of doing business" and that it thus "represents a meaningful incentive for SWBT to maintain a high level of performance."

The calculation of the remedy amounts will be visible and traceable to the underlying performance data. Ameritech will provide the calculation supporting Tier 2 payments to the State in a monthly report to the Commission, similar to the reports Ameritech currently provides the FCC to support payments to the U.S. Treasury pursuant to the FCC's conditions for approving the SBC-Ameritech merger. For Tier 1 remedies, to be paid by credits, CLECs may obtain information as to the amount credited, and the component measurements and remedy calculations, from their Account Manager. Tier 1 credits would be issued on an aggregated, per-CLEC basis each month. Total remedies (Tier 1 and Tier 2) will be posted on the Ameritech Performance web-site.

32. The remedy plan will include a procedure to determine the cause(s) of, or reasons(s) for poor performance. The cause(s) or reason(s) will be publicly disclosed. The plan will include a trigger to initiate this procedure.

**Response:** Ameritech proposes that account/service teams review performance measurements with CLECs on a regular basis. They will be the focal point for requests for requests by CLECs for analysis. Requests to the account/service team will be the trigger to initiate this process.

33. The remedy plan should be open-ended in escalating penalties for continued poor performance (“duration”) or it should include a rationale as to why the penalties should stop escalating after a specified time period and should identify and explain the specific duration in question.

**Response:** Ameritech’s proposal provides that remedy amounts will escalate for continued poor performance, using the same methodology as the SWBT plan, which was developed by the Texas Public Utility Commission and has been approved by the FCC. In short, remedies escalate each month for continued poor performance, reach a maximum amount in six months, and continue to accrue at that maximum amount in each subsequent month that the performance shortfall persists.

34. The remedy plan should be open ended in escalating penalties for acutely poor performance (severity) or it should include a rationale as to why the penalties should stop escalating after a specified level of poor performance is reached and should identify and explain the specific “severity” level in question.

**Response:** Ameritech’s plan escalates penalties based on the severity of performance shortfalls in four separate ways:

**1. The severity of the performance “miss.”**

Ameritech’s plan multiplies the normal remedy amount for each measure by a factor that is based on the difference between actual performance and the minimum performance required to meet the applicable standard: in other words, the multiplier increases as actual performance falls further from the standard. The factor is computed

using the same standard statistical methods that Ameritech uses to determine whether a perceived shortfall is statistically significant. Although practically speaking, there are limits to this difference (*i.e.* in the real world, one would not expect an average installation interval of infinity), Ameritech's plan does not set any limits on the shortfall factor.

## **2. The volume of customers affected.**

For certain measures, a single transaction typically corresponds to a single end user. For example, missing a due date on an order affects the end user that placed that order. The number of transactions thus bears on the competitive impact of that measure (and of Ameritech's success or lack of success in meeting the applicable performance standard). In those cases, Ameritech's proposal calculates remedies on a per occurrence basis. The plan does not set an upper limit on the number of occurrences for these measures.

To illustrate: Assume Ameritech fails to meet the standard for missed due dates on a given product or service, such as 2-wire digital loops. The per-occurrence remedy for such loops is \$150. If CLEC "A" orders 1,000 2-wire digital loops in that month, and Ameritech misses 100 due dates more than the applicable standard and statistical tests allow, the remedy would be \$15,000 (\$150 x 100). Meanwhile, if CLEC "B" orders only 10 such loops, and the number of missed due dates above standard is 1, B's remedy would be \$150. A would receive 100 times the remedy that B does. That's only fair: A made more of an effort to compete, and because more of its end users had service installed late, it is more likely to have been harmed in some way (by losing customers or goodwill) by the performance miss.

For certain other measures, transaction volume has only a limited relationship to the number of customers involved. The volume of calls that pass over interconnection trunks increases as the number of customers increases, but not every single call translates to a different customer. In these cases, Ameritech calculates remedies on a per occurrence basis, but there is a cap on the number of occurrences to reflect the fact that volume has a less direct relationship than the one-to-one relationship in other measures like missed due dates.

Finally, a third group of measures addresses transactions where volumes are typically small (such as Bona Fide Requests, or unbundled local switching) but a single miss can affect a large number of customers. In those cases, Ameritech calculates remedies on a “per measure” basis – the same remedy amount applies for all CLECs that experience a miss, even for small volumes.

Ameritech’s proposal reflects the fact that volume matters for some measures and not for others. The CLEC proposal does not; it applies the same “per measure” remedies regardless of the volume of transactions affected and regardless of the competitive impact of a miss. Thus, in the illustration above for unbundled loops, CLECs A and B would receive the same remedy (at a minimum, \$2,500) even though A ordered 1,000 times more unbundled loops than B did.<sup>10</sup> That makes no sense: It does not give CLECs any incentive to compete for customers. In fact, it rewards the CLEC that makes no effort to compete and collects remedies for doing little business.

### **3. The importance of the measure at issue.**

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<sup>10</sup> The minimum per-measure remedy under “Tier 1” of the CLEC plan is \$2,500. The maximum is \$25,000. Note that the CLEC plan also calls for a second “tier” of remedies to be paid to the State. The minimum “Tier 2” remedy is \$25,000.

There are over 150 performance measures, which are further broken down into over 3,000 potential measurement categories. They are designed to address a variety of functions. There is no escaping the fact that different OSS functions (and the associated performance measures) can have a different impact. With some measures, the link between performance and the marketplace is more direct: End users notice if service is not installed or repaired on a timely basis. With other measures, though, the connection is less direct: End users do not notice if the salesperson on the other end of the phone gets pre-order information in 5.5 seconds instead of 4.7 seconds. They do not notice if their order “flows through” the OSS interface electronically or is typed in instead, unless the lack of flow-through causes a delay or error in installation – and if it does, that delay or error is redressed by the remedies paid under a separate measure. Similarly, end users do not care if the delay in filling an order is due to “lack of facilities” or some other reason; all they care about is the delay, and that too is covered by a separate measure.

Ameritech’s proposal reflects these basic realities. The remedy amount for each measure reflects its “priority” – high, medium or low. A “high” priority measure (such as missed installation due dates or missed repair commitments) is one that has a direct tie to the end user. A “medium” or “low” priority measure is one that has only an indirect tie to the end user, because:

- (a) It is just a subset of a high-priority measure, and there is already another remedy in place for the overall measure. For example, the percentage of missed due dates due to lack of facilities is just a subset of the measure of missed due dates overall. Similarly, flow-through measures one step in the ordering process (the electronic translation of orders between the interface to Ameritech’s systems); to

the extent, if any, a decrease in flow-through affects the overall time to install service, it would be captured by the measures for average installation interval and missed due dates. It would be unfair double-counting to give these subsidiary measures the same high priority as the principal measures to which they relate.

- (b) The measurement interval is so short that a performance miss would have a minimal impact, at most. For example, the benchmark intervals for pre-order responses are expressed in tenths of a second; a response that arrives a tenth of a second “late” is hardly likely to cause any CLEC to lose a customer.

The CLECs do not object to any of the classifications Ameritech employs. Rather, they try to eliminate the priority system altogether. Their main argument is that priorities of any kind are “arbitrary.” But the particular classifications here were not plucked from thin air, as the CLECs seem to suggest; they were developed by the Texas commission, with input from incumbent and competing LECs, and with subsequent review and approval by the Department of Justice and FCC. And, as described above, the classifications chosen by Ameritech simply reflect common sense: not all measures affect competition equally, and the impact of some measures is already captured by others. It is not arbitrary to consider such facts; indeed, it would be arbitrary to ignore them. That is why the FCC approved Bell Atlantic’s use of a priority system (which uses classifications similar to those here) when it granted Bell Atlantic’s application to enter the long-distance market in New York. *New York 271 Order*, ¶ 438 (“The New York Commission has sought to place sizable penalties on the most critical performance areas”). Further, the FCC, DOJ, and the Texas Commission all approved Southwestern

Bell's long-distance application and endorsed the Texas remedy plan, which is the source of the priority classifications here.

The CLECs may contend that the priority classifications are biased in favor of certain products or services and against others. That is not true. The only distinction Ameritech makes is by *measure*, not by product. Thus, for example, the average installation interval for each and every category of unbundled loops receives the same (high) priority as the average installation interval for interconnection trunks or any of the various resale services.

#### **4. The Duration of the Performance Shortfall.**

Ameritech's plan provides for increased remedies in the event poor performance persists over time. See response to principle number 33.

35. The remedy plan should be a separate agreement from other agreements entered into between SBC/Ameritech and the CLECs.

**Response:** Ameritech proposes a simple interconnection agreement amendment. See response to principle number 30 above.

36. The remedy plan will contain methods to ensure that penalties are not passed on to, or recovered from, SBC/Ameritech's customers or ratepayers.

**Response:** Ameritech recognizes that such recovery would be inappropriate, as the FCC noted in its *Texas 271 Order*, and commits that its cost studies (to support wholesale and retail pricing) will exclude the remedies paid under the plan.

37. The penalties set forth in the remedy plan for SBC/Ameritech shall not offset, nor shall they be offset by, penalties contained in, and/or required or permitted by any other IURC-approved plan, agreement, amendment, rule, order, or other mandate; or contained in and/or required or permitted by any other ILEC-to-CLEC contract or

performance/remedy plan affecting SBC/Ameritech or into which SBC/Ameritech has entered and that is not approved by a regulatory agency.

**Response:** Ameritech anticipates that it will pay CLECs remedies once for the same shortfall in performance. Therefore, the remedy plan is intended to supersede duplicative performance measurements and remedies in current interconnection agreements. Aside from this transitional measure, however, the plan expressly provides that its remedies are not exclusive. Ex. A, § 6.1.

The FCC's order approving the SBC/Ameritech merger provides that performance remedies assessed at the state level are to offset those performance remedies attributable to a given state and payable to the FCC under the merger conditions.

### **Change Management/Change Control Mechanism**

38. The remedy plan will have a method to measure performance and assess penalties in the area of change management/ change control.

**Response:** Ameritech has added a performance measure for OSS change management (MI 15). There are currently no remedies associated with this performance measure by agreement of the parties in the collaborative, due to the lack of experience needed to formulate a proper benchmark and remedy amount.

39. The remedy plan will contain a mechanism to permit adjustments to the plan to accommodate changes in the OSS systems, processes, or procedures.

**Response:** Ameritech has agreed to implement performance measures for new OSS systems and new products (generally) within 6-8 weeks of introduction of the related systems, products, processes, or procedures. And, as noted above, Ameritech's plan provides for quarterly status meetings and in-depth six-month reviews to discuss further



proposed changes to performance measures and thus to accommodate changes in the OSS systems, processes or procedures.

40. The remedy plan should contain performance measures and penalties pertaining to the post-271 scalability of SBC/Ameritech's facilities, equipment, systems, software, processes, etc., in the context of the ability of SBC/Ameritech to handle commercial volumes of CLEC traffic following the granting of 271 authority for Indiana. For major releases or upgrades, change management and change control tests should include volume tests at "normal," "peak," and "stress" levels.

**Response:** The third-party OSS audit will include a "stress test" of the post-271 scalability of Ameritech's facilities, equipment, systems, software, and processes, and of Ameritech's ability to handle commercial volumes of CLEC traffic. In addition, Ameritech has introduced a new "test environment," modeled on the one approved by the FCC in its *Texas 271 Order*, which will allow CLECs to test the OSS at normal, peak and stress levels if they believe such testing appropriate.

On a going forward basis, Ameritech's performance measures will allow the parties to evaluate Ameritech's ability to handle actual volumes as they continue to increase, and thus to gauge Ameritech's ability to handle further increases in volume. To the extent additional measures related to scalability are developed or desired, the parties or the Commission can advance them as part of the ongoing six-month review process.

41. Change control authority over the remedy plan and the performance measures supporting the plan will ultimately rest with the IURC. There should be an explicit process or mechanism for the Commission, on its own motion, to identify problems and make changes to the remedy plan or the performance measures that support the plan.

**Response:** The IURC will have oversight responsibility for both the remedy plan and the performance measures. Once the specifics have been ordered by the Commission, the

Commission has authority to modify them as with any other ruling that the Commission makes.

42. The remedy plan will include an explicit, predictable, flexible, and public mechanism for SBC/Ameritech and other parties to identify problems to the IURC and permit changes to the remedy plan and the performance measures used to support the plan.

**Response:** Ameritech's plan provides for regular quarterly status meetings and in-depth six-month reviews, open to all CLECs and to the Commission, in which all parties may identify concerns and propose changes to the remedy plan and the performance measures used to support the plan. These periodic reviews are predictable (as they occur on a regular basis), public (as they are open to all CLECs and the Commission) and flexible (as there are no pre-set limits on proposals or on the subjects that may be discussed).

43. The change management/change control remedy plan for SBC/Ameritech may contain diagnostic measures, where appropriate, to further identify problem areas and to allow for fine tuning of the performance measure standards in future proceedings.

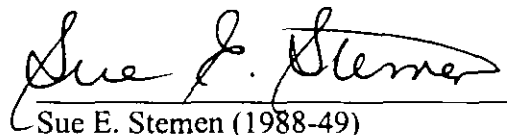
**Response:** As described under principle number 36, Ameritech has added a diagnostic performance measure for OSS change management (MI 15). If this measure identifies problem areas, or if fine tuning of a performance measure standard is needed, the parties can address their concerns during the six-month review process.

44. The penalties set forth in the change management/change control portion of the remedy plan for SBC/Ameritech shall not offset, nor shall they be offset by, penalties that are: (1) contained in, and/or required or permitted by any other portion of this remedy plan; (2) contained in, and/or required or permitted by any other IURC-approved plan, agreement, amendment, rule, order, or other mandate; or (3) contained in and/or required or permitted by any other ILEC-to-CLEC contract or performance/remedy plan affecting SBC/Ameritech or into which SBC/Ameritech has entered and that is not approved by a regulatory agency.

**Response:** Remedies set forth in any portion of the plan (including the measures related to change management) do not offset, and are not offset by, remedies set forth in any other portion of the plan. The remedies in the plan are intended to replace, and supersede, duplicative remedies set forth in interconnection agreements; otherwise, they do not offset and are not offset by any other agreement or Commission mandate. The FCC's order approving the SBC/ Ameritech merger provides that performance remedies assessed at the state level are to offset those performance remedies attributable to a given state and payable to the FCC under the merger conditions.

WHEREFORE, for the reasons set forth above, Ameritech respectfully requests that the Commission adopt Ameritech's proposed remedy plan attached hereto and grant all other proper relief for Ameritech.

Respectfully Submitted,

A handwritten signature in black ink, reading "Sue E. Stemen", written over a horizontal line.

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Certificate Of Service

I hereby certify that a true and correct copy of the foregoing was served electronically upon the following this 9<sup>th</sup> day of February, 2001.

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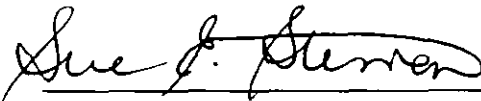
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